

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	ADDISON, Deborah	Confirmation No.	5799
Serial No.:	10/532,520	Art Unit:	3772
Filed:	January 30, 2006	Examiner:	LEWIS, Kim M.
For:	FLUID WOUND DRESSING		

Director of Technology Center 3700
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. 1.181

Dear Sir:

Applicants hereby petition to require the Examiner of the above-referenced application to enter and act upon Applicants' response mailed October 22, 2007, which was incorrectly denied entry by the Examiner as being "non-compliant".

In the alternative, Applicants request that the accompanying copy of the Response mailed October 22, 2007 be accepted in response to the Notice of Non-Compliant Amendment issued September 19, 2008.

Applicants further petition for the refund of the extension fee, submitted on even date herewith, to extend the period for response set forth in the Notice of Non-Compliant Amendment issued September 19, 2008, due to the clear error on the part of the U.S.P.T.O. and the failure of the Examiner to reply to Applicants' inquiries as described in paragraphs 10 and 11, below.

Pursuant to the requirements of 37 C.F.R. 1.181, Applicants set forth the facts relevant to the petition in numbered paragraphs below.

1. On February 8, 2007 a non-final Office Action was issued as to the claims of the present application.
2. On June 8, 2007, Applicants' representative filed a response to the non-final Office Action, signed by an attorney registered to practice before the U.S.P.T.O. (the Office).
3. On June 20, 2007, a Notice of Non-Compliant Amendment was issued by the Office, correctly pointing out errors in the previously-filed amendment.
4. On October 22, 2007, Applicants' representative filed a corrected response in compliance with the Notice of Non-Compliant Amendment of June 20, 2007 (copy attached).
5. Almost one year later, on September 19, 2008, the Examiner issued another Notice of Non-Compliant Amendment, which is at issue in this petition.
6. The Notice of Non-Compliant Amendment of September 19, 2008, fails to specifically identify any problem with amendment format, identified in items 1-4 of the form. Instead, item 5, which refers to the signature requirements of 37 C.F.R. 1.4, is checked and refers to comments on the continuation sheet.
7. On the continuation sheet, in explanation of the reasons, the Examiner indicates:

the amendments are signed by an attorney not of record (i.e. a new power of attorney has not been entered in the application).

8. The assignee transferred this application to the present representative on or about August, 2008.
9. On or about November 4, 2008, Applicants' representative spoke with the Examiner regarding the Notice of Non-Compliant Amendment issued on September 19, 2008. Applicants' representative pointed out that the reasons for the notice were incorrect, i.e. that signature on an amendment/response by an attorney not of record, but registered to practice before the Office, is acceptable

and not a reason for the Examiner to refuse to act on the response, citing the sections of the MPEP, set forth below.

MPEP 714.01(c) Signed by Attorney or Agent Not of Record

See MPEP § 405. A registered attorney or agent acting in a representative capacity under 37 CFR 1.34, may sign amendments even though he or she does not have a power of attorney in the application. See MPEP § 402.

MPEP 405*>Patent Practitioner< Not of Record [R-5]

Papers may be filed in patent applications and reexamination proceedings by registered attorneys or agents not of record under 37 CFR 1.34. Filing of such papers is considered to be a representation that the attorney or agent is authorized to act in a representative capacity on behalf of applicant.

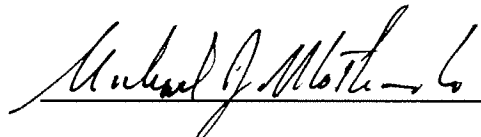
10. The Examiner reviewed the MPEP and returned a call to the Applicants' representative, indicating her agreement with Applicants' position, and that she would advise as to further actions which might be necessary by Applicants or the PTO to advance prosecution.

11. To date, no information has been forwarded to Applicants and no further action by the Office on the application is indicated in Public PAIRS.

12. Accordingly, since the Notice of Non-Compliant Amendment was issued in error, Applicants request entry of the response filed October 22, 2007, and an action on the merits of said response.

Applicants' review of MPEP 1002.02(c) fails to indicate any fee due for this petition. However, if a fee is due, the Office is authorized to charge said fee to Applicants' representatives' Deposit Account no. 502478.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Mlotkowski", written over a horizontal line.

Michael J. Mlotkowski
Attorney for Applicants
Registration No.: 33,020
(703)584-3270

Date: December 19, 20008

POST OFFICE ADDRESS to which
correspondence is to be sent:

Roberts, Mlotkowski, Safran & Cole
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McLean, VA 22102

Attachments: Petition for Extension of Time
Response filed 10/22/2007 (copy)